

STATE OF MONTANA TERM CONTRACT

DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
165 MITCHELL BUILDING
PO BOX 200135
HELENA MT 59620-0135
PHONE: (406) 444-2575 FAX: (406) 444-2529

SPB#00-04B
IBM PERSONAL COMPUTERS AND
INTEL-CLASS SERVERS

This is an exclusive contract

CONTRACT PERIOD	FROM	January 1, 2004	CONTRACT YEAR	NEW <input type="checkbox"/>
	TO	December 31, 2004		RENEW <input checked="" type="checkbox"/> 2 nd Renewal, 4 th Yr.
VENDOR ADDRESS	Corporate Technology Group 2127 Euclid Avenue Helena, MT. 59601		ORDER ADDRESS	
ATTN:	Darrell Lively		ATTN:	
PHONE:	(406) 443-3200 ext. 1210		PHONE:	
FAX:	(406) 443-1212		FAX:	

PRICES: IBM Price Schedule C plus 7%

DELIVERY: 30 Days A.R.O.

F.O.B.: Destination

TERMS: Net 30 days

REMARKS: This term contract is an exclusive use contract for personal computers and Intel-class servers, meaning State agencies (with the exception of the Montana University System and the Office of Public Instruction) must purchase from it. Laptops, accessories, supplies, and services may be purchased from this contract at the option of the State.

For warranty service contact:
IBM Corporation
Attn: Service/Education
100 N Park Avenue
Helena MT 59601
(800) IBM-SERV or (406) 444-5000

BRAD SANDERS, Contracts Officer

AUTHORIZED SIGNATURE/DATE

REVISED 5/99

STATE OF MONTANA - TERM CONTRACT
Standard Terms and Conditions

The following standard terms apply unless specifically stated otherwise within the term contract.

REFERENCE TO CONTRACT

The contract (Purchase Order) number **MUST** appear on all invoices, packing lists, packages and correspondence pertaining to the contract. Furnish all invoices in triplicate.

SHIPPING

Goods shall be shipped prepaid, F.O.B. Destination. In the event the terms specify F.O.B. Shipping Point, shipping charges will be prepaid and itemized as a separate line item on invoicing. Such shipments shall be via the least expensive way. The State reserves the right to refuse any C.O.D. delivery.

PAYMENT TERM

All payment terms will be computed from the date of delivery of goods OR receipt of a properly executed invoice, whichever is later. The State is allowed 30 days to pay such invoices.

TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

HAZARDOUS CHEMICAL INFORMATION

The contractor shall provide one set of the appropriate material safety data sheets and container label upon delivery of a hazardous chemical to the user agency. All safety data sheets and labels will be in accordance with the OSHA "Hazard Communication Rule", 29 CFR 1910 and 50-78-101 through 50-78-402 MCA.

VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

NON-DISCRIMINATION

The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Please provide as much advance notice as possible for requests.

The contractor must comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. All hiring for goods and services purchased by this contract must be on the basis of merit and qualifications; there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

HOLD HARMLESS/INDEMNIFICATION

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the contractor and/or its agents, employees, subcontractors or its representatives under this agreement, all to the extent of the contractors negligence.

ACCESS AND RETENTION OF RECORDS

The contractor agrees to provide the Department, Legislative Auditor or their authorized agents, access to any records necessary to determine if the contract has been complied with.

The contractor agrees to create and retain records supporting the services rendered (or goods delivered) for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or third party.

CONFORMANCE WITH INVITATION FOR BID/PROPOSAL

No alteration in any of the terms, conditions, delivery, price, quality, quantities or specifications of the order as established by quotation from the contractor, shall be granted without prior written consent of the State Procurement Bureau. Goods delivered which do not conform to the contract terms, conditions and specifications may be rejected and returned at the contractor's expense.

State agencies will place orders directly with the contractor during regular working hours. Orders may be placed by phone and will be confirmed with a written memo or purchase order. The agency will reference the term contract number on all purchase orders or correspondence pertaining to the contract.

Revised 5/99

Personal Computers and Intel-Class Servers

Term Contract #SPB00-04B

***Corporate Technology Group of Helena
For IBM Computers***

IBM PERSONAL COMPUTERS AND INTEL-CLASS SERVERS

1. Parties

This term contract is entered into by and between the Department of Administration of the State of Montana, (hereinafter referred to as the "Department"), whose address and telephone number are:

Department of Administration
Information Technology Services Division
P.O. Box 200113
Helena, MT 59620
406-444-2700

and "Corporate Technology Group" (hereinafter referred to as "Contractor"), whose Federal ID Number, address and telephone number are:

81-0454360
2127 Euclid Avenue
Helena, MT. 59601
406-443-3200 ext. 1210

2. IBM Partnership

Contractor understands that there is a contract between the Department and IBM Corporation establishing the ability for the Department to purchase IBM computers as a result of RFP #9973-B. Attachment A contains the IBM Business Partner Agreement between the IBM Corporation and Corporate Technology Group, which establishes the channel through which the Department will purchase IBM computers and services. If this partnership agreement is terminated, and not replaced with a subsequent partnering agreement, this contract may be terminated, or assigned, by the Department. It is understood by the Contractor that if for any reason the Contractor is no longer authorized by IBM Corporation to sell IBM personal computers, or is no longer able to sell IBM personal computers for any other reason, this contract may be terminated, or assigned, by the Department.

3. Effective Date, Duration and Renewal

- 3.1 This term contract shall take effect on January 1, 2004. This term contract shall terminate on December 31, 2004 unless terminated earlier in accordance with the terms of this contract.
- 3.2 This term contract may be renewed by the Department for six (6) one-year periods. In no case may this contract run longer than ten (10) years. Reference: 18-4-313, MCA.

4. Ordering Procedure

- 4.1 Purchase orders may be mailed to:
Corporate Technology Group
2127 Euclid Avenue
Helena, MT 59601
Attn: Darrell Lively
- 4.2 Purchase orders may be faxed to:
406-443-1212
Attn: Darrell Lively

5. Delivery Schedule

- 5.1 All ordered products are to be delivered within thirty (30) days from the date of receipt of an order. Failure to meet the thirty (30) day delivery schedule may result in cancellation of the order and/or this contract.
- 5.2 If the Contractor is unable to meet the maximum delivery schedule of thirty (30) days, the ordering agency must be notified and an alternate delivery schedule may be mutually agreed upon.
- 5.3 Agencies requesting an alternate, expedited delivery schedule must be contacted if the alternate schedule cannot be met. If an alternative delivery schedule cannot be negotiated, the State reserves the right to cancel the order.
- 5.4 Shipments shall all be FOB destination.

6. Consideration/Payments

- 6.1 In consideration for the products and services to be provided, the ordering agency will pay within thirty (30) days of receipt of a properly executed invoice. The Contractor will bill each agency directly for products and services provided.
- 6.2 The Department or ordering agencies may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract.

7. Warranties

The Contractor warrants that products offered through this term contract will conform to the specifications requested, be fit and sufficient for the purpose manufactured, be of good material and workmanship and free from defect. Products offered must be new and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Products received must be undamaged and in working order. Any products not meeting the above requirements may be returned to the supplier at their expense and a full refund given to the State.

Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Any exceptions to the specifications must be clearly indicated. Exceptions may be rejected.

Service Warranty

The Contractor warrants that service will be provided in a workmanlike manner by qualified technicians in accordance with the service description applicable at the time of the order. All repairs are warranted for at least ninety (90) days from date of repair.

8. Returns

Any product offered through this term contract can be returned for any reason to the supplier within thirty (30) days of receipt by the State with no penalties. Returns within this thirty (30) day period will include all original packing materials, including all items and accessories in the original box. The State will be responsible for any return shipping charges, but will not be charged any additional fees and is entitled to a full refund of the purchase price.

9. Scope, Amendment, and Interpretation

- 9.1 This term contract consists of 14 numbered pages, RFP #9973-B and its three addenda, the Contractor's response as amended including the clarification question responses, and negotiations. In the case of dispute or ambiguity, the order of precedence of document interpretation is in that same order.
- 9.2 These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties. Mutually agreeable changes may be made to this contract provided that the terms of this contract:
- 9.2.1 Do not materially change the Contractor's obligations to the State as expressed in the Contractor's accepted offer (RFP response).
- 9.2.2 Do not violate the Constitution, Laws, or Rules of Montana.
- 9.2.3 Do not impose onerous obligations or conditions that materially change the value of the product or services to be provided to the Department.
- 9.2.4 Do not contravene the mandatory requirements of the RFP.

10. Exclusive Term Contract

This term contract is an exclusive contract for personal computers and Intel-class servers, meaning State agencies (with the exception of the Montana University System and the Office of Public Instruction) must purchase from it. Laptops, accessories, supplies, and services may be purchased from this contract at the option of the State.

11. Contract Management Liaison

This term contract is managed by the Information Technology Services Division of the Department of Administration for the State of Montana in accordance with 2-17-501, MCA. Contract management inquiries and problems should be addressed to:

Computing Policy and Development Section
Information Technology Services Division
P.O. Box 200113
Helena, MT 59620-0113
Telephone: 406-444-2700
FAX: 406-444-2701

12. Contractor Liaison

The Contractor shall have an Account Executive in place for the duration of this term contract. The Account Executive is the liaison to the Contract Management Liaison and will assume responsibility for the coordination of all products and services under this contract. The Account Executive will meet with the Contract Management Liaison, agency project manager, agency procurement manager, and/or others as necessary to resolve any conflicts or disagreements under this contract. If the Account Executive changes, the State must be notified immediately. The State reserves the right to require the Contractor to change the State's Account Executive, or any representative serving the State, if in the opinion of the State the current Account Executive, or representative, is not adequately meeting the needs of the State.

IBM PERSONAL COMPUTERS AND INTEL-CLASS SERVERS

Account Executive as of January 1, 2000:

Darrell Lively
Corporate Technology Group
2127 Euclid Avenue
Helena, MT 59601
406-443-3200 ext. 1210

13. Reporting Requirements

The Account Executive will provide contract status reports to the Contract Management Liaison on a quarterly basis in accordance with the schedule (Table 1) below. The State has the right to request a report outside of the normal reporting period and the Contractor has up to three (3) working days from the date of the request to comply. The quarterly report will have the data broken up into monthly purchases. The quarterly reports will include: purchasing agency, date of purchase, quantity purchased, items purchased and cost of purchase. The State does not foresee needing information other than that stated, but reserves the right to make additional requests.

Table 1
Schedule of Due Dates for Quarterly Status Reports

Report Period End	Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

14. Headings

The heading or captions of the sections and subsections of this term contract are inserted for convenience only, shall not be deemed to be part of this term contract, and in no way define, limit, extend or describe the scope of intent of any provisions hereof.

15. Access and Retention of Records

- 15.1 Contractor agrees to provide the Department, the Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance.
- 15.2 Contractor agrees to create and retain all records supporting the products and services rendered for a period of three (3) years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party. Reference: 18-1-118, MCA.

16. Addition/Deletion Procedure

- 16.1 The Contractor may add new products, new product lines, or upgrades to existing term contract equipment for addition to this contract by notifying the Contract Management Liaison. Any product offered through this term contract is subject to all terms of this contract. Obsolete, discontinued, or products no longer required by the State may be deleted by notifying the Contract Management Liaison at least ten (10) days prior to the deletion.

Price changes are subject to approval if the change is a price increase. In the case of a price increase request, approval/rejection of the request will be given in writing to the requesting party from the Contract Management Liaison within approximately fifteen (15) days.

16.2 The Product Requirements Section of this term contract, Section 20, applies to all products added to this term contract. The Department reserves the right to remove any products from this term contract at any time. The Contractor agrees to immediately remove any product from this term contract upon notification from the Contract Management Liaison.

16.3 Support and replacement parts of discontinued products must be available for three (3) years after a product is officially deleted from this contract.

17. Price Reductions

Price reductions will be accepted throughout the term of this contract. The Contractor shall reduce the contract price of any product initially provided or added by at least the same percentage as any manufacturer's retail price reduction within ten (10) working days of the reduction. The intent of this requirement is to insure that the State maintains a competitive price relative to the market price throughout the term of this contract and thereby insure utilization of this agreement for the benefit of both the State and the Contractor. If contract prices do not remain competitive with the market for the products and services provided through this term contract, the Department may elect to terminate this contract.

18. Price Protection

18.1 For products and services offered through this term contract, prices will be based on the IBM Schedule C price list plus 7%. The Contractor and the Department may renegotiate the cost-plus percentage for any renewals of this term contract.

18.2 The Contractor agrees that through the term of this initial contract and any renewals the State will be entitled to any price reductions at least equal to any lower rates made available to any other customer of comparable volume.

19. Tax Exemption

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

20. Product Requirements

The Contractor certifies that all products offered through this term contract are fully compatible with the State's computing environment as specified in Section 2 of RFP # 9973-B. Should any product provided through this term contract, or any product added to this term contract, fail to exhibit fully compatible performance, the Contractor will be responsible for assuming all costs associated with taking immediate action to correct, replace, or refund the cost of all non-compliant products. The occurrence of compatibility problems which cannot be resolved quickly and satisfactorily may result in the Department deleting the product from this term contract. The Department shall have the final authority to deem a product compliant or not.

21. Assignment, Transfer and Subcontracting

Contractor may not assign, transfer or subcontract any portion of this term contract without the express written consent of the Department. Reference: 18-4-141, MCA.

22. Choice of Law and Venue

This term contract is governed by the laws of Montana. The parties agree that any litigation concerning this term contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Reference: 18-1-401, MCA.

23. Compliance with Laws

- 23.1 Contractor must comply with all applicable federal and state law including the prevailing wage laws.
- 23.2 Contractor must comply with the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.
- 23.3 If one or more provisions of this term contract are deemed to be unlawful or unconstitutional or stricken by a court of law, all valid provisions that are severable from the invalid provisions remain in effect and are valid and binding on the parties. If any provision hereof is in conflict with any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed to be modified to conform with such statute, rule of law, court order, or judgement.

24. Indemnification

The Contractor agrees to indemnify the State, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed, goods or rights to intellectual property provided or omissions of services or in any way resulting from the acts or omission of the Contractor and/or its agents, employees, subcontractors or its representatives under this agreement, all to the extent of the Contractor's negligence.

25. Liquidated Damages

The State of Montana reserves the right to assess liquidated damages in the amount of one half of one percent (1/2 of 1%) per calendar work day on the amount of purchase price for failure to comply with the conditions of the award. This sum may be deducted from supplier payment for failure to deliver/performance when specified. No premium will be awarded to the supplier for delivery/performance in advance of the specified time.

26. Patent and Copyright Protection

- 26.1 In the event of any claim by any third party against the Department that the products furnished under this contract infringe upon or violate any patent or copyright, the Department shall promptly notify Contractor. Contractor shall defend such claim, in the Department's name or its own, as appropriate, but at Contractor's expense. Contractor will indemnify the Department against all costs, damages and attorney's fees that a Court finally awards as a result of such claim. If the Department reasonably concludes that its interests are not being properly protected, it may enter any action. However, any settlement by the Department with the party alleging such infringement or violation shall not be binding upon Contractor and the Contractor shall be under no obligation to pay or indemnify the Department. Further, if principles of governmental or public law are involved, the State of Montana may participate in the defense of any such action.
- 26.2 If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the Department the right to continue using the alleged infringing product, or modify the product so that it becomes non-

infringing. If none of the above options can be accomplished, or if the use of such product by the Department shall be prevented by permanent injunction, the Department agrees to return the product at Contractor's request and the Contractor agrees to grant the Department a credit for full cost of the product and any related product provided by Contractor which can no longer be used effectively without the use of the infringing product.

- 26.3 This Section shall not apply if the infringement, or claim thereof, is based upon the use of products supplied by the Contractor in combination with other software not made or supplied by Contractor (Department or other vendor supplied), or the use of products by the Department with apparatus, data or programs not furnished or supplied by Contractor

(Department or other vendor supplied), or products not manufactured or supplied by Contractor (Department or other vendor supplied). This Section will apply to all products offered by Contractor.

27. Independent Contractor

- 27.1 Contractor is an independent Contractor and neither the Contractor nor its employees are employees of the Department.
- 27.2 Contractor shall not be compensated for work performed prior to its having provided to the Department a Certificate of Workers' Compensation Insurance or an Independent Contractor's Exemption under 39-71-401, MCA.

28. Insurance

- 28.1 The Contractor shall maintain for the duration of the contract, at its cost, primary insurance coverage against claims for injuries to persons or damages to property, including contractual liability, which may arise from work performed under this contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.
- 28.2 The Contractor must provide a certificate for Commercial General Liability and Commercial Automobile Liability (Occurrence Coverage) to include bodily injury, personal injury, and property damage with combined single limits \$500,000 per claim and \$1,000,000 aggregate per year from an insurer with a Best's Rating of no less than A-.
- 28.3 This certificate must name the State of Montana as an additional insured under the Contractor's policy including the Contractor's general supervision, products, premises and automobiles used.
- 28.4 A Certificate of Insurance, indicating compliance with the required coverages, has been filed with the State Procurement Bureau.

29. Workers' Compensation

Contractors are required to maintain Workers' Compensation Insurance or an Independent Contractor's Exemption covering the Contractor and/or employees while performing work for the State of Montana in accordance with 39-71-120/401/405, MCA. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire contract period.

30. Meetings

The Contractor is required to meet with Department personnel to resolve technical or contractual problems that may occur during the term of this contract. Meetings will occur as problems arise and will be coordinated by the Department. The Contractor will be given a minimum of three (3) full working days notice of meeting date, time, and location. Face to face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted.

Consistent failure to participate in problem resolution meetings (two (2) consecutive missed or rescheduled meetings), or failure to make a good faith effort to resolve problems, may result in termination of this contract.

31. Notice

Written notice sent by certified mail, return receipt requested, shall be deemed made when received or initially refused by the other party.

32. Termination

32.1 Breach or non-performance of any contract term shall constitute cause upon which the Department may immediately terminate this contract.

32.2 If the Contractor fails to perform the work in accordance with the provisions of this term contract, and does not cure or does not correct such failure within a period of thirty (30) days after receipt of the Department's written notice thereof, the Department may, by written notice, terminate the whole or any part of this term contract.

32.3 The Department, at its sole discretion, may terminate or reduce the scope of this term contract if available funding is reduced for any reason. Reference: 18-4-313, MCA.

32.4 The Department may cancel this term contract without cause by giving ninety (90) days written notice.

33. Year 2000 Compliance

The Contractor warrants that all hardware, software, and/or firmware delivered, developed, or licensed, under this term contract, shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Contractor, provided that all products (e.g. hardware, software, firmware) used in combination with other designated products properly exchange data with it. The remedies available to the State under this warranty shall include repair or replacement of any product whose non-compliance is discovered and made known to the Contractor, in writing, within this warranty period or within one year after acceptance, whichever is longer.

Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this term contract, with respect to defects, other than Year 2000 compliance performance.

IBM PERSONAL COMPUTERS AND INTEL-CLASS SERVERS

Execution

The parties, through their authorized agents, have executed this term contract beginning on February 1, 2000.

CONTRACTOR – **Corporate Technology Group**

Signature

Date

Name

Title

Address

City, State, Zip Code

81-0454360

Social Security # or Federal
Employer ID #

DEPARTMENT OF ADMINISTRATION – **Information Technology Services Division**

Signature

Date

Anthony J. Herbert

Name

Administrator

Title

Legal Counsel, Department of Administration

State Procurement Bureau